

Exhibit 8 to Exhibit A

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TEXARKANA DIVISION
4
5 MOTOROLA MOBILITY, INC. and)
6 GENERAL INSTRUMENT)
7 CORPORATION,)
8 Plaintiffs,)
9 v.) No. 5:11-CV-053-JRG
10 TiVo Inc.,)
11 Defendant.)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

11 TiVo Inc.,)
12 Counterclaim Plaintiff,)
13 v.) No. 5:11-CV-053-JRG
14) CONFIDENTIAL
15 MOTOROLA MOBILITY, INC.,)
16 GENERAL INSTRUMENT)
17 CORPORATION, TIME WARNER CABLE)
18 INC., and TIME WARNER CABLE)
19 LLC.,)
20 Counterclaim Defendants.)
21 DEPOSITION OF WES WHITNAH
22 Taken on behalf of Plaintiffs
23 ***
24 BE IT REMEMBERED THAT the deposition of WES
25 WHITNAH was taken before Rosemary Tanzer, a Registered
Professional Reporter and a Certified Shorthand Reporter
for Oregon and Washington, on Wednesday, January 23,
2013, commencing at the hour of 9:34 a.m., at The Westin
Portland, 750 Alder Street, Portland, Oregon.

Page 2

1 APPEARANCES:
2
3 DLA PIPER
4 BY MR. ANDREW N. STEIN
5 500 Eighth Street, NW
6 Washington, D.C., 20004
7 202.799.4782 . Andrew.Stein@dlapiper.com
8 Attorney for Motorola, General Instrument,
9 Time Warner Cable LLC, and Time Warner
10 Cable, Inc.
11
12 IRELL & MANELLA, LLP
13 BY MR. BEN J. YORKS
14 840 Newport Center Drive, Suite 400
15 Newport Beach, CA 92660
16 949.760.0991 . byorks@ireil.com
17 Attorney for TiVo
18
19 ARENT FOX, LLP
20 BY MR. CRAIG A. GELFOUND
21 555 West Fifth Street, 48th Floor
22 Los Angeles, CA 90013
23 213.629.7400 . gelfound.craig@arentfox.com
24 Attorney for Grass Valley
25
26 ALSO PRESENT: Mr. Gordy Foster, videographer
27 ***

Page 3

1 THE VIDEOGRAPHER: And we're now on
2 record. My name is Gordy Foster of Veritext.
3 Today's date is January 23rd, 2013, and the time is
4 approximately 9:34 a.m. This deposition is being
5 held at The Westin Portland hotel, 750 S.W. Alder
6 Street in Portland, Oregon. The case caption is
7 Motorola Mobility Incorporated and General
8 Instrument Corporation, plaintiffs, versus TiVo
9 Incorporated, defendant, and TiVo, Incorporated,
10 counterclaim plaintiff versus Motorola Mobility
11 Incorporated, General Instrument Corporation, Time
12 Warner Cable Incorporated and Time Warner Cable LLC,
13 counterclaim defendants. And that's in the U.S.
14 District Court for the Eastern District of Texas,
15 Texarkana Division.
16 The name of the witness is Wes Whitnah. And at
17 this time would the attorneys present please identify
18 themselves and the parties they represent for our court
19 reporter.
20 MR. YORKS: Ben Yorks of Irell and Manella
21 representing TiVo.
22 MR. GELFOUND: Craig Gelfound of Arent Fox
23 appearing on behalf of Grass Valley.
24 MR. STEIN: Andrew Stein from DLA Piper,
25 LLP on behalf of Motorola, General Instrument, Time

Page 4

1 Warner Cable LLC, and Time Warner Cable, Inc.
2 THE VIDEOGRAPHER: Rosemary Tanzer of
3 Veritext will now swear our witness.
4
5 WES WHITNAH,
6 having first been sworn by the reporter to tell the truth,
7 testified under oath as follows:
8
9 EXAMINATION
10 BY MR. STEIN:
11 Q And, Mr. Whitnah, would you state your name for
12 the record, please, and spell it as well.
13 A I get that a lot. My name is Wes Whitnah,
14 that's W-H-I-T-N-A-H.
15 Q And, Mr. Whitnah, have you been deposed before?
16 A No. This is my first deposition.
17 Q Then I'll just go over some quick ground rules.
18 If I ask a question, and your attorney,
19 Mr. Gelfound, doesn't object or -- I'm sorry,
20 doesn't instruct you not to answer, then you're to
21 provide an answer to my question. Does that make
22 sense to you?
23 A Yes.
24 Q And obviously, if -- if Mr. Gelfound instructs
25 you not to answer, then it's up to you if you're

Page 101

1 that stand -- or represent the fiber channel board?

2 A Yes, it does.

3 Q And the MEDR, what board is that?

4 A MEDR, get my acronyms right, is the master

5 enhanced disk recorder board. That's basically the

6 master CODEC board, in essence.

7 Q And the SEDR, I'm going to take a guess, is

8 that slave enhanced disk recorder?

9 A I think we call it secondary, but yes, it's

10 essentially a slave. It works in conjunction with

11 the master that has -- so the master has a little

12 box called VX there. That was representative of the

13 VxWorks operating system that was running on the

14 Intel i960 processor. That's -- the i960 was the

15 one in charge of controlling the interaction of

16 those channels on the board. So the master had the

17 processor. The SEDR, the secondary, took its

18 instructions from the master in order for control.

19 Q And serial I/O, that's the serial input and

20 output board?

21 A Correct. Yes.

22 Q And sorry. Go ahead.

23 A Yes. The serial I/O included video and in some

24 cases embedded audio, which would be carried along

25 as part of the video signal.

Page 102

1 Q And the ASPB board, what does that stand for?

2 A That is the audio. I don't remember what S is.

3 But it's basically the audio processing board.

4 Q And FX is, again, the FX video FX board?

5 A Correct.

6 Q And PAC, what is PAC on the right-hand side of

7 this figure 3-2 (sic).

8 A PAC is an extension pack for the audio. We

9 only had enough room for a certain number of XLR

10 connectors on the back end of the Profile. So there

11 was a connector to plug into an additional PAC that

12 had all the XLR cables for the 16 channels of audio

13 that we could support, and it could also expand

14 into -- 16 per channel, so it could expand well

15 beyond that if -- depending on the number of

16 channels you had. So that PAC is just an externally

17 connected way of getting audio in and out.

18 MR. STEIN: Let's go off the record for a

19 second.

20 THE VIDEOGRAPHER: Going off record. The

21 time is 12:50.

22 (Break in proceedings.)

23 THE VIDEOGRAPHER: We're back on record.

24 The time is 12:54.

25 Q BY MR. STEIN: Mr. Whitnah, could you just

Page 103

1 describe briefly any corporate changes that Grass

2 Valley or Tektronix has undergone since you became

3 affiliated with Grass Valley?

4 A We've had quite a series of changes over the

5 years. A couple of the big ones, Grass Valley was

6 spun off as a separate company in September of 1999

7 when Tektronix was divesting in a lot of their

8 holdings, individual companies and that. So we were

9 one of those that was spun off as their own separate

10 company. We were purchased by Terence Gooding, who

11 was a private investor and held us for a period of

12 time. And then we were then sold to Thomson

13 Multimedia. So we then became known as Thomson

14 Grass Valley. And shortly -- well, some point after

15 that, Thomson changed its name to Technicolor, so we

16 became part of Grass Valley Technicolor brand. And

17 then in the last year or two, I don't remember the

18 exact time, in January of 2011 our sale to Francisco

19 Partners was finalized. And just before that we

20 knew that the sale was pending and changed to Grass

21 Valley USA LLC as an entity. So those were the

22 corporate changes that happened over time.

23 In some of those changes we moved sites.

24 So from Tektronix we moved to -- from Beaverton to

25 another facility in Beaverton. And then when we got

Page 104

1 assimilated with Thomson, they had their own ways of

2 doing things so we changed source control

3 methodology and how we ran programs and things like

4 that, and the same thing when we left. So there

5 were many points at which we had changed revision

6 control, document control, archives, and other

7 things in those moves.

8 Q I've noticed that you've referred to a

9 particular document at certain points during today's

10 testimony.

11 A Yes.

12 Q And just -- what is that document?

13 A This is a document I created for my own sake to

14 keep dates straight. So on the one document I put

15 together the Profile release dates, and these are

16 all from -- from the release notes that I had

17 available. So all of the release note dates, when

18 they were published, what versions, and also the

19 number of the release note were there. And then the

20 events and the timeline I retrieved from my own

21 personal e-mail from the public announcements and

22 such that were made at different points in time.

23 Q Can I see that?

24 A Yes.

25 Q Thank you.

Page 105

1 MR. YORKS: I would also like to see that.
 2 A So all the product release information were
 3 from the release notes and publicly available
 4 information, and the others were from my -- were of
 5 e-mail notifications and that, that I received from
 6 a lot of those announcements.
 7 Q BY MR. STEIN: Probably mark this.
 8 A And I created that for this deposition so I
 9 could keep track of dates and times.
 10 MR. STEIN: Let's go off the record real
 11 quick.
 12 THE VIDEOGRAPHER: Going off the record.
 13 The time is 12:59.
 14 (Break in proceedings.)
 15 THE VIDEOGRAPHER: We are back on record.
 16 The time is 1:02.
 17 Q BY MR. STEIN: The court reporter has handed
 18 you a document that's been marked as Exhibit 11.
 19 And could you just identify this document for the
 20 record.
 21 (Exhibit No. 11 marked.)
 22 A Yes. This is a document I created to help --
 23 for this deposition to help me keep track of dates
 24 and times and what things have transpired.
 25 Q BY MR. STEIN: At the top you've made a

Page 106

1 handwritten notation. Is that October 24,
 2 REL.2.2.patch. Do you see that?
 3 A Yes.
 4 Q Is that your handwriting?
 5 A Yes.
 6 Q And what does October 24, REL.2.2.patch mean?
 7 A October 24 refers to the date of the PDF file
 8 in question for the release notes -- version 2.2
 9 release notes. We previously had a question,
 10 because in the release notes itself, the date was
 11 missing. And so October 24th, 1997, is the date of
 12 the PDF file that I have that contains that
 13 document.
 14 Q What does the REL.2.2.patch signify?
 15 A REL22 patch is a tag we have in our source code
 16 repository indicating all the files that were used
 17 at the time that that source code was released to
 18 manufacturing. So that signifies every version of
 19 the files in the VND22 source code that we've
 20 previously provided as to which ones were used to
 21 create that version of software. And we use that as
 22 a marker both in time for us to figure out how was
 23 it created and we can then recreate it later on. It
 24 also provides a branch point for further sustaining
 25 and bug work. So that any 22 -- any future 2.2

Page 107

1 release bug fixes and that would be made off of that
 2 basis.
 3 Q And so then, this here, you've noted April 1997
 4 is version 2.1 of the software, is that when that
 5 was released?
 6 A Yes.
 7 Q And then the notations on the left-hand side,
 8 11 and six handwritten notations, is that your
 9 handwriting?
 10 A That is my handwriting.
 11 Q What do those notations signify?
 12 A The number of years from now to those points in
 13 the past. So in December 2011 was roughly 11 years
 14 ago when all the PDR devices went into production.
 15 And the six for December 2006 was about six years
 16 ago when all those products went out of service or
 17 end of service.
 18 Q Is it your understanding that some of the
 19 PDR200 series devices are still in operation today?
 20 A I know of PDR200, 100, 300, yeah, all of them
 21 are actively still functioning in many sites.
 22 Q Is it fair to say that when these were
 23 manufactured by Grass Valley, they were built to
 24 last a long time?
 25 A Yes, and they've proven that that's the case.

Page 108

1 Q And the Grass Valley events timeline that's on
 2 the bottom of page 1 of Exhibit 11 and continues on
 3 to page 2, what is this telling us?
 4 A In the deposition I was asked to be prepared to
 5 speak to certain events that -- and changes in
 6 company that would have affected providing documents
 7 and other things of that sort. So these are some of
 8 the key things that happened that would cause us
 9 trouble to go back and recreate object code or find
 10 documents and things; because of company changes,
 11 things were moved and destroyed, because of
 12 repository changes, not everything gets carried
 13 forward to the new stuff. And also, with things
 14 going out of production and out of service, those
 15 things are then removed from public circulation.
 16 Q In July 2001, you note a switch -- sorry, a
 17 change from CVS to ClearCase.
 18 A Yes.
 19 Q What is CVS and what is ClearCase?
 20 A CVS is a revision control system that we use to
 21 keep track of versions of our software code. It was
 22 the basis for all of our changes and it was a
 23 repository for that. That's what the REL22 patch
 24 refers to. That was a tag in that system to keep
 25 track of our changes. ClearCase is another type of